IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6262 OF 2005

1. Dashratsingh Babusingh Purohit.
2. Ajay @ Papu Damu Salunkhe. ... Applicants.

Versus.

State of Maharashtra. ... Respondent.

Shri G.V.Bhagat for the Applicants.

Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 4th October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. The Applicants are accused in an offence registered under sections 448, 457, 465, 467, 471, 504, 506, 147, 148, 149, 34 of the Indian Penal Code. On a plain reading of the complainant, the specific allegation against the Applicants appears to be that on the relevant date i.e. on 9th February 2005, the Applicants attempted to dispossess the Complainant. A private complaint was filed by the Complainant on which an order was passed under section 156(3) of the Code of Criminal Procedure, 1973 by the learned Magistrate. The allegation in the private complaint is that though one Lachmandas Lundiram had died long back, subsequently a power of attorney was fabricated in his name in favour

of the co-accused and on the basis of the fabricated power of attorney the co-accused entered into a development agreement in favour of another co-accused. The learned Advocate for the Applicants relied upon the orders passed by the Civil Court and submitted that the case made out by the Complainant against the Applicants is totally false.

3. The learned A.P.P. pointed out that attempt was made to dispossess the Complainant on the basis of the development agreement which is got executed on the basis of the fabricated power of attorney. The learned A.P.P. pointed out that the signature of the alleged original owner on the power of attorney is obviously forged as it is executed seven years after the death of the person.

4. I have considered the submissions. The alleged power of attorney is not in favour of the present Applicants. The power of attorney is executed in favour of the co-accused Ravi Gulabrao Bhanse who in turn has executed the development agreement. It is pertinent to note that in the complaint made by the complainant on 9th February 2005 to various authorities no specific allegation has been made against the Applicants and in fact their names have not been mentioned. The case of the Complainant that she was in possession of the premises on 9th February 2005 appears to be doubtful in the light of the orders passed by the Civil Court in the

suit filed by the Complainant on 9th February 2005. In the said suit the Complainant could not succeed in getting order of temporary injunction in respect of the same property. The allegation in the private complaint filed by the Complainant against the Applicants is that the Applicants accompanied with the other co-accused on 9th February 2005 came to the property and an attempt was made to dispossess the Complainant and to commit house breaking. It is not the case of the prosecution that the Applicants are instrumental in forging the power of attorney which is allegedly executed in favour of the co-accused. Considering the material on record a case is made out for enlarging the Applicants on bail. However, they will have to be subjected to stringent conditions.

5. Hence the following order is passed:

(i) The Applicants shall be enlarged on bail in connection with C.R.No.I-18 of 2005 registered with Vithalwadi Police Station, subject to furnishing a personal bond of Rs.15,000/- each with one or two local sureties in the like amount.

(ii) The bail is granted subject to condition that the Applicants will attend the concerned Police Station on every Sunday

between 11.00 a.m. to 2.00 p.m. till filing of the charge sheet and will cooperate for the investigation. Thereafter, till conclusion of trial, the Applicants will report to the concerned Police Station once in a fortnight.

(iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicants shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

Judge.